

IN THE CIRCUIT COURT OF THE 19TH
JUDICIAL CIRCUIT IN AND FOR
MARTIN COUNTY, FLORIDA

AB, a minor by and through
her legal guardian and mother,
HEATHER MASERONI,

CASE NO: 432014CA000444CA

CIRCUIT CIVIL DIVISION

Plaintiff,

v.

SP BEHAVIORAL, LLC d/b/a
SANDY PINES HOSPITAL,

Defendant.

THIRD AMENDED COMPLAINT

Plaintiff AB, by and through her legal guardian and mother Heather Maseroni, sues Defendant SP Behavioral, LLC d/b/a Sandy Pines Hospital ("Sandy Pines") and alleges the following:

JURISDICTION & VENUE

1. This is an action for damages in excess of this Court's minimum jurisdictional limits of \$15,000.00, exclusive of interest and costs, to redress the injuries the minor Plaintiff suffered through the negligence of Sandy Pines.

2. The Nineteenth Judicial Circuit in and for Martin County, Florida, has subject matter jurisdiction pursuant to Art. V, § 5 of the Florida Constitution.

3. Venue is proper in this Court pursuant to Florida Statute § 47.011, because all material acts occurred in Martin County, Florida, and the causes of action accrued in Martin County.

PARTIES

4. Plaintiff AB was at all times material a resident of Sandy Pines Hospital located in Tequesta, Florida.

5. Heather Maseroni, her mother, was at all times material, an adult resident of Martin County, Florida.

6. Defendant SP Behavioral, LLC d/b/a Sandy Pines Hospital ("Sandy Pines") was and is a Florida limited liability corporation and is the owner, statutory licensee, and operator of Sandy Pines Hospital located at 11301 SE Tequesta Terrace, Tequesta, Florida, 33469.

FACTUAL ALLEGATIONS

7. Sandy Pines Hospital is for-profit, in-patient residential treatment center for children and adolescents with mental, emotional, and behavioral disorders, licensed under Chapter 394, Florida Statutes.

8. As explained by Florida Statute §394.492, residential treatment centers like Sandy Pines provide mental health services to emotionally disturbed children, including children with serious emotional disturbances or mental illness who are not able to function in their family, school, or community.

9. AB was one such child.

10. These children are, by definition, impaired and vulnerable. Many are victims of physical or sexual abuse; others like AB, by virtue of their mental illness, are unable to exercise appropriate judgment and are susceptible to inappropriate suggestions and conduct by adults. All of them are vulnerable.

11. All of which Sandy Pines knew, because it was in the business of treating children with these conditions and was licensed by the State of Florida to do so.

12. All of Sandy Pines' patients are children. Sandy Pines Hospital treats *only* children between the ages of 5 and 17 and only in a 24-hour restricted residential program.

13. That means, simply put, these children cannot leave and are under the 24/7 supervision and control of Sandy Pines, which is solely responsible for providing them with safety, security, and everything else necessary for their mental, physical, and emotional well-being.

14. Sandy Pines' control of, and responsibility for, these vulnerable, dependent children creates a special relationship between the facility and its residents.

15. With that special relationship comes a duty to keep these children safe from foreseeable harm.

16. Sexual abuse of children in residential treatment centers by the adult staff members of those centers is one such foreseeable harm.

17. "Abuse" in this context is defined, in part, by Fla. Admin. Code Rule 65E-9.002(1) as "any willful or threatened act that results in any physical, mental, or *sexual injury or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired*. Abuse of a child includes acts or omissions." (emphasis added)

18. The risk of child sexual abuse in these facilities is so well known that the State of Florida requires Sandy Pines and other residential treatment facilities to provide every member of its staff with a statement summarizing child abuse and neglect laws and outlining the staff member's responsibility to report all incidents of child abuse and neglect.

19. Sandy Pines is required by law to give this statement to every staff member every year. Each staff member is required to sign the statement, acknowledging his or her understanding of their responsibility to report and prevent abuse. The facility is further required to keep each year's signed acknowledgement in the employee's personnel file.

20. In addition, Sandy Pines had adopted its own policies precluding its employees from having any contact with its minor residents outside of their professional interaction within the facility.

21. Those policies precluded employees from calling, texting, or giving their telephone numbers to the children residing at Sandy Pines; from having contact with them outside the facility after their discharge; and, of course, from having any intimate or sexual contact with these children.

22. Breach of these policies was grounds for immediate discharge.

23. But Sandy Pines did not enforce these policies.

24. AB was a resident of Sandy Pines Hospital from February 28, 2012 to December 2012.

25. During her admission, Sandy Pines Hospital agreed to ensure the safety and well-being of AB, like all other dependent children in its care, and agreed that AB, as a client, would be assured freedom from neglect and abuse.

26. Ainsley Gayle was an adult employee of Sandy Pines, working with its children as a mental health counselor.

27. In this role, and through his employment at Sandy Pines, Gayle supervised then 14-year-old AB, had one-on-one, direct contact with her, and had control over her.

28. Soon after her admission, Gayle began sexually abusing AB.

29. He would take her to “private” counseling sessions in the media room, and other places, and touch, kiss, and have other inappropriate and unlawful sexual conduct with AB and told her that he had romantic feelings for her.

30. Sandy Pines had a duty to discover and prevent this inappropriate sexual contact between its adult employee, Gayle, and its dependent minor patient, AB; report it to the State of Florida; and protect AB from further harm and contact with Gayle.

31. Gayle's inappropriate contact with AB could and should have been discovered by Sandy Pines, with the exercise of due care.

32. But Sandy Pines did not timely discover Gayle conduct or protect AB from it.

33. Being mentally ill and easily impressionable, AB became influenced by and emotionally dependent on Gayle, who continued his sexual relationship with her at the facility.

34. Gayle's conduct was entirely foreseeable to Sandy Pines, which had placed AB in the zone of risk for such conduct by its adult employees.

35. In May 2012, Lynne Spears, a licensed clinical social worker employed by Sandy Pines, noticed the inappropriate relationship between Gayle and AB and reported it to Sandy Pines management and to AB's mother Heather Maseroni.

36. Takesha Lott, the daytime floor manager at Sandy Pines, questioned AB's roommate, who confirmed that a relationship existed between Gayle and AB and that AB had a "crush" on Gayle.

37. Spears told Maseroni about the inappropriate "relationship" between Gayle and AB.

38. Maseroni demanded, and Sandy Pines agreed, that Gayle should have no further interaction with AB while she was a resident at Sandy Pines.

39. Sandy Pines also had a legal duty to further investigate and report the contact between Gayle and AB, which it told Maseroni it would do.

40. But Sandy Pines did none of this.

41. It did not adequately or appropriately investigate Gayle's abuse of AB.
42. It did not report Gayle's abuse of AB to the State of Florida.
43. And it did not prevent Gayle from having continuing control over and contact with AB.
44. As a direct result, Gayle continued to pursue and have inappropriate sexual contact with minor child AB during the entire course of her admission to Sandy Pines. He sent her nude pictures by text message, gave her his telephone number, continued to kiss and touch her inappropriately, and otherwise continued his harmful contact with her.
45. Sandy Pines allowed its employee Gayle to have continued access to, and control over, AB even though it knew or reasonably should have known that Gayle presented an unreasonable risk of harm to her.
46. As a foreseeable result of Sandy Pines' failure to report and terminate Gayle and protect AB from harm while she was under its custody and control, Gayle continued to take advantage of, and have inappropriate sexual relations with, AB after her discharge.
47. After these incidents, and as a direct result of them, Plaintiff became more depressed, confused and angry. Her emotional disturbances worsened to the point that she acted out and was unable to successfully return to her home and school.
48. She continued to act out, sometimes violently, and has been in State custody for most of the past two years, where she remains today.
49. Gayle was arrested and prosecuted by the State of Florida for his sexual contact with AB and convicted of a felony under Florida Statute §800.04(7)(b).

COUNT I

DIRECT NEGLIGENCE

50. Plaintiff re-alleges and adopts by reference the allegations contained in paragraphs 1 through 49 set forth above.

51. Defendant Sandy Pines had a duty to supervise the children in its custody, including AB, and to protect them from foreseeable harm, specifically including harm by its employees.

52. Defendant had a further duty, by statute and common law, to protect these children from abuse and agreed to ensure that AB would be free from sexual abuse while in its care.

53. Sandy Pines knew, or with the exercise of due care, should have known that Gayle was engaging in inappropriate sexual contact with, and abuse of, minor child AB.

54. Sandy Pines there breached its duty to AB by allowing Ainsley Gayle to touch, harm, and have inappropriate sexual contact with her while she was under its care.

55. Sandy Pines further breached this duty by, *inter alia*, failing to report Gayle to the State of Florida after learning of his inappropriate contact with AB; failing to conduct a proper investigation of Gayle; failing to prevent further contact between Gayle and AB; failing to protect AB from further contact with, and harm by, Gayle; and by failing to terminate Gayle after learning of his inappropriate contact with AB.

56. Sandy Pines allowed Gayle to have continued access to, and control over, AB even though it knew or reasonably should have known that Gayle presented an unreasonable risk of harm to her.

57. As a direct result of Sandy Pines' failure to report and terminate Gayle and protect AB from harm while she was under its custody and control, Gayle continued to take advantage of, and have inappropriate sexual relations with, AB after her discharge.

58. Gayle's continuing harm to AB after her discharge, was the direct and proximate result of Sandy Pines' negligence in protecting and supervising AB while she was under its custody, care, and control, and was a reasonably foreseeable to Sandy Pines since its negligence had placed AB in the zone of risk for this harm.

59. Defendant's negligence was therefore a substantial factor in causing harm, loss, injury and damage to AB.

60. As a result and proximate result of the Defendant's negligence, AB has suffered and continues to suffer mental and emotional anguish, insecurity, damage to her self-esteem, self-worth, embarrassment, shame and humiliation, and will incur medical expenses in the future. Her losses are permanent and continuing, and she will suffer these losses in the future.

61. Defendant's negligence further worsened AB's pre-existing mental and emotional conditions; set back her ability to overcome those conditions; and substantially impaired her ability to return to home, school, or society.

WHEREFORE, Plaintiff demands judgment against SP Behavioral, LLC d/b/a Sandy Pines Hospital for all damages allowed by law, including compensatory damages in excess of this Court's minimum jurisdictional limits, costs, interest, and such other and further relief as this Court deems just and proper.

COUNT II

NEGLIGENT SUPERVISION AND RETENTION

62. Plaintiff re-alleges and adopts by reference the allegations contained in paragraphs 1 through 49 set forth above.

63. Gayle's employment by Sandy Pines gave him access to and control over AB and placed AB with the foreseeable zone of risk caused by Gayle's employment.

64. Sandy Pines had a duty to supervise its employees, including Gayle, to ensure they properly executed their duties; complied with Florida law, regulations, and facility policies; and did not harm the minor children in the facility's custody, care, and control, including AB.

65. Despite this duty, Sandy Pines failed to properly supervise Gayle and thereby allowed him to have improper physical, sexual, and emotional contact with, and influence over, AB while she was a resident of Sandy Pines.

66. Gayle's actions were foreseeable and were, or should have been, readily detectible by Sandy Pines had it exercised reasonable and appropriate supervision over Gayle.

67. Through the exercise of due care, Sandy Pines should have become aware of Gayle's inappropriate contact with AB and his unfitness to continue in his position as her counselor.

68. Once it was on notice of Gayle's inappropriate contact with AB and harmful propensities, Sandy Pines had a further duty to properly and thoroughly investigate all allegations of inappropriate contract between its employees and the minor children under its care, custody, and control; report any employees having improper contact with those children to the State of Florida and to proper law enforcement authorities; restrict those employees' access to the minor children under its care, including AB; and promptly discharge those employees.

69. Sandy Pines itself directly committed to AB's mother Heather Maseroni that it would properly investigate Gayle's improper contact with AB; take appropriate action against Gayle; and prevent Gayle from having any further contract with AB from May 2012 through her discharge from its care.

70. Had Sandy Pines properly executed its duty to investigate and supervise Gayle, Sandy Pines would, or reasonably should, have discovered Gayle's continuing misconduct and

would therefore have discharged Gayle or, at a minimum, barred him from all contact with AB, thus preventing him from continuing to harm her.

71. Instead, Sandy Pines breached its duty of care after learning of Gayle's improper contact with AB by negligently retaining Gayle and by allowing him to have continued access to, and control over, AB even though it knew or reasonably should have known that Gayle was having improper contact with AB and presented an unreasonable risk of harm to her.

72. As a direct result of Sandy Pines' negligent failure to investigate, supervise, report, and terminate Gayle and protect AB from continuing contact with him while she was under its custody and control, Gayle continued to take advantage of, and have inappropriate sexual relations with, minor child AB after May 2012 and continuing after her discharge on December 2012.

73. Gayle's continuing harm to AB after her discharge was the direct result of Sandy Pines' placement of Gayle in a position of control over AB and its negligence in supervising and retaining Gayle while AB was under its custody, care, and control and was.

74. Gayle's continuing harm to AB after discharge was reasonably foreseeable to Sandy Pines because its negligence had placed AB in the zone of risk for this harm.

75. Defendant's negligence was therefore a substantial factor in causing the harm, loss, injury and damage that AB suffered at Gayle's hands after her discharge and all damages flowing therefrom.

76. As a result and proximate result of the Defendant's negligent supervision and retention of Gayle, AB has suffered and continues to suffer mental and emotional anguish, insecurity; damage to her self-esteem and self-worth; embarrassment, shame and humiliation; aggravation of her pre-existing mental and emotional conditions which has set back her ability to overcome those conditions and substantially impaired her ability to return to home, school, or

society; and she has incurred medical expenses in the past and will need continuing treatment in the future. Her losses are permanent and continuing, and she will suffer these losses in the future.

WHEREFORE, Plaintiff demands judgment against SP Behavioral, LLC d/b/a Sandy Pines Hospital for all damages allowed by law, including compensatory damages in excess of this Court's minimum jurisdictional limits, costs, interest, and such other and further relief as this Court deems just and proper.

REQUEST FOR JURY TRIAL

77. Plaintiff further demands trial by jury on all issues so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed using the Florida e-filing portal on July 30, 2017, which electronically served same by email on: Jay Cohen, Esq., Jay Cohen, P.A., 100 Southeast Third Ave., Suite 1500, Fort Lauderdale, FL 33394; pleadings@jaycohenlaw.com; rayala@jaycohenlaw.com; kpinedo@jaycohenlaw.com; and George Bochetto, Esq., Bochetto & Lentz, P.A., 1524 Locust St., Philadelphia, PA 19102; gbochetto@bochettoandlentz.com

Respectfully submitted:

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